IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

M/s J. & J. Chemicals & Pharmaceuticals, Khunja and Ors.
Versus
State of Rajasthan.

S.B.CRIMINAL REVISION NO. 935/2005
against the Order dated 21.8.2004 passed by Chief Judicial Magistrate, Bikaner in Criminal Case No. 291/04.

Date of Order : 26/04/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioners
Mr. J.P.S.Choudhary, public prosecutor.

BY THE COURT:-

By the instant criminal revision petition under Section 397/401 Cr.P.C., the petitioners have assailed the order dated 21.8.2004 passed by Chief Judicial Magistrate, Bikaner (for short 'the trial court' hereinafter), whereby the trial court framed charges against the petitioners for the offences under Sections 18 (a), 18 (a) (VI), 18 (b) r/w Sec.16(1)a, 17-(C), 17 a (f), 17 b (D) r/w Section 27(a), 27 (d) of the Drugs & Cosmetics Act, 1940 (for short 'the Act' hereinafter). Aggrieved by the order

impugned, the petitioners have filed the instant revision petition.

I have heard learned counsel for the parties. Perused the order impugned as also complaint filed by complainant Devendra Kumar Kedawat, Drugs Control Officer, Bikaner.

Learned counsel for the petitioners has confined his arguments to the extent of challenging the order impugned framing charge under Section 27 (a) and 27 (d) of the Act and contended that in whole of the complaint, it has no where been mentioned that the drug which was seized from the petitioners was said to be of sub-standard, which when used by any person for or in the diagonosis, treatment, mitigation, or prevention of any disease or disorder, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code solely on account of such drug being adulterated or spurious or not of standard quality.

I have carefully gone through the complaint filed by the Durgs Control Officer. In the complaint, it no where appears that Cetirizine, the drug, which was seized from the petitioners, on being analyzed by the Chemist, was found to be of sub-standard when used by by any person for or in the diagonosis,

treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body amounting to grievous hurt. The very essential ingredients of the offences under Section 27 (a) and 27 (d) of the Act are not made out from the plain reading of the complaint and therefore, the offences punishable under Sections 27 (a) and 27 (d) of the Act are prima-facie not made out even if the evidence proposed to be produced by the complainant remains uncontroverted. In the circumstances, therefore, the trial court fell in error in framing charges against the petitioners for the offences under Sections 27 (a) and 27 (d) of the Act. However, the charges framed by the trial court for the remaining offences by the order impugned cannot be said to be erroneous.

Consequently, the revision petition is partly allowed. The order impugned dated 21.8.2004, to the extent framing charges against the petitioner for the offences under Sections 27 (a) and 27 (d) of the Act, is set aside and the petitioners are discharged of the offences under Sections 27 (a) and 27 (d) of the Act. The stay petition also stands disposed of.

(H.R.PANWAR),J.

rp